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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/458,896	12/10/1999	MICHAEL C. BERTRAM	533/038	9421

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MOSER, PATTERSON & SHERIDAN L.L.P.  
595 SHREWSBURY AVE  
FIRST FLOOR  
SHREWSBURY, NJ 07702

EXAMINER

MOLINARI, MICHAEL J

ART UNIT PAPER NUMBER

2665

DATE MAILED: 01/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/458,896

Applicant(s)

BERTRAM ET AL.

Examiner

Michael J Molinari

Art Unit

2665

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 October 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_


3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.Claim(s) objected to: none.Claim(s) rejected: 1-17.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

  
HUY D. VU  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600

Continuation of 5. does NOT place the application in condition for allowance because: Referring to claim 1, the applicant has argued that the Omoto reference does not teach asset packets that are associated with content packets. However, in the action dated 16 September 2002 the examiner demonstrated that Omoto does teach that the asset packets and content packets of Omoto are associated with each other. The applicant has argued that the packets used by the applicant operate at different bit rates. However, this limitation is not recited in the claim and has no bearing on the rejection. The applicant has argued that Omoto does not teach the asset packets as described in the specification (for example, that they are used for navigation). However, this limitation is not cited in the claim and therefore has no bearing on the rejection. As claim 10 cites similar limitations to those of claim 1, it has been rejected for similar reasons (see the action dated 16 September 2002). The applicant has argued that claims 5 and 7 also contain the limitation that the asset packets are associated with the content packets. As stated above, the examiner demonstrated in the action dated 16 September 2002 that the two packet types in the Omoto reference are associated. Further referring to claims 5 and 7, the applicant has argued that the two inventions cannot be combined. However, the test for obviousness is not whether the features of the reference may be bodily incorporated into the other to produce the claimed subject matter but simply what the references make obvious to one of ordinary skill in the art. In this case, the examiner has argued that the features of each are desirable and that it would have been obvious to one with ordinary skill in the art to combine them. The applicant has further argued that the combination of the references does not teach that the asset packets are associated with the content packets. As stated above, the examiner believes that it is clear that Omoto teaches just such a limitation, and therefore that such a limitation would exist in a combination of Omoto and Lajoie et al. The applicant has also argued that the combination of Omoto and Lajoie et al. does not embrace the problem that the applicant's invention solves. However, it is the position of the examiner that the combination of Omoto and Lajoie et al. does meet the limitations as recited in the claims and that there is motivation to combine, and that the problem that the applicant intended to solve has no bearing on the rejection. The applicant has argued that the combination of Omoto and Lajoie et al. fails to teach the replacement of NULL packets with asset packets to produce a transport stream containing both asset packets and content packets. The examiner has demonstrated in both of the previous actions that Omoto does teach this. Referring to claim 9, the applicant has argued that Omoto does not teach replacing NULL packets with asset packets to produce a transport stream containing both content packets and asset packets. The examiner has demonstrated in both previous actions that Omoto does teach this..